IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12138 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANAN INVESTMENT SUNIL KIRITKUMAR HUF THROUGH ITS KARTA
Versus
KOKILABEN USHAKANT MEHTA AND OTHERS

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Appearance :
MR SUNIT S SHAH for Petitioner.
MR DC DAVE for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 03/05/2006

ORAL JUDGMENT

The respondents herein are the original plaintiffs of Summary Suit No.3434/2003 pending before the City Civil Court, Ahmedabad for adjudication. The said suit is filed by the

plaintiffs for recovering Rs.33,82,000/- on the ground that the deceased – Ushakant Mehta had invested certain amount with the defendant firm. In the aforesaid suit, defendant gave an application at Exh.9 for granting leave to defend the suit.

Learned trial Judge by his order below Exh.9 application, allowed the summons for judgement partly and the defendant was granted leave to defend on condition that an amount of Rs.10,00,000/- (Rupees Ten Lacs only) may be deposited within a period of eight weeks from the date of order. It is the aforesaid order, which is impugned in the present petition at the instance of the original defendant.

At the time of hearing of this petition, learned advocates appearing for both the sides submitted that there is a consensus prevailing between the parties.

Mr.Sunit Shah, learned advocate for the petitioner (original defendant) submitted that in compliance of interim order passed by this Court his client has already deposited an amount of Rs.3,00,000/- (Rupees Three Lacs only) before this Court. He further submitted that his client is ready to deposit additional amount of Rs.2,00,000/- (Rupees Two Lacs only) on or before 30th June, 2006. He also submitted that his client has no objection if the original plaintiffs are permitted to withdraw the aforesaid amount, however, he requested that on this ground order of the trial Court may be modified appropriately.

Mr.D.C.Dave, learned advocate for the respondent (original plaintiffs) submitted that his clients does not have any

objection if the order of the trial Court is modified suitably and the defendant is granted leave to defend the sit on condition of depositing Rs.5,00,000/- in all, as stated herein above. He further submitted his client may be permitted to withdraw the said amount after filing necessary undertaking before the trial Court stating that in case the suit is dismissed, his client will refund the said amount with appropriate interest as may be ordered in the decree.

Since both the parties have consented, order of the trial Court passed below Exh.9 is modified and the defendant is granted leave to defend the suit on depositing Rs.5,00,000/- (Rupees Five Lacs only) before the trial Court. As the defendant has already deposited Rs.3,00,000/- before this Court, said amount be transmitted to the City Civil Court, where the suit is pending and the defendant may deposit additional amount of Rs.2,00,000/- in the City Civil Court. On such deposit, the plaintiffs shall be at liberty to withdraw the said amount of Rs.5,00,000/- on filing an undertaking that plaintiffs will abide by the decree and in case the amount deposited by the defendants is ordered to be refunded, the plaintiffs will refund the same as per the order of the trial Court.

After depositing the amount as aforesaid, the defendant may file written statement in the suit within a period of four weeks thereafter.

Accordingly, this petition is partly allowed and the defendant is granted leave to defend the suit on depositing an amount of Rs.5,00,000/- (Rupees Five Lacs), as stated herein

above. Rule is made absolute to the above extent with no order as to costs.

In the facts and circumstances of the case, learned trial Judge may try to dispose Summary Suit No.3434/2003 expeditiously and preferably within a period of two years from the date of receipt of writ of this order.

(P.B.MAJMUDAR, J.)

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